

Supreme Court, U.S.
FILED

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No. 82-1125

In The
Supreme Court of the United States

October Term, 1982

JONATHAN L. HAAS,

Petitioner

vs.

EDGAR HASH and ELAINE HASH,

Respondents

RESPONSE TO PETITION FOR CERTIORARI

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January 24, 1983

QUESTIONS PRESENTED

1. Does the Supreme Court have jurisdiction under 28 U.S.C. § 1257(3) when no federal question was raised or decided by the state courts?

2. Should the Supreme Court review by certiorari an insubstantial federal claim first asserted in the petition for the writ of certiorari?

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OPINION BELOW

The opinion of the Arizona Court of Appeals in this case is an unreported memorandum decision. The text of the decision is reprinted in Petitioner's Appendix at 1a-11a.

JURISDICTION

Petitioner alleges that this Court's jurisdiction rests upon 28 U.S.C. § 1257(3). Respondents contend that jurisdiction is lacking, because no federal question was raised or decided in the courts below. The absence of jurisdiction is fully discussed in the argument section of this brief.

CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED

28 U.S.C. § 1257:

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

U.S. Const. Amend. XIV, § 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner Jonathan L. Haas filed a malicious prosecution action in the Superior Court of Maricopa County, Arizona, against Wanda Yates and Respondents Edgar Hash and Elaine Hash.

Petitioner's malicious prosecution complaint alleged that respondent Edgar Hash, an attorney, had previously filed an action against petitioner for fraud on behalf of his client, Wanda Yates, as the executrix of an estate.

Petitioner Haas also alleged that the court had entered summary judgment in his favor in the fraud action, that attorney Hash had brought the action maliciously and without probable cause, and that Haas had been damaged as a result of the fraud action.

The summary judgment in the fraud action was a result of "a stipulation by counsel"^{1/} and was not a "determination of the motion [for summary judgment] on the merits," according to the judgment signed by the trial judge. (Petitioner's Appendix at 87a). The trial court record shows unequivocally that the entry of judgment was pursuant to an agreement of counsel. (Id. at 14a).

The parties filed cross-motions for summary judgment in the malicious prosecution action. The Superior Court granted respondents' motion and denied Haas'. The trial court held that there had been no "favorable determination" for Haas in the prior fraud action as

^{1/}Petitioner Haas was represented by counsel in the fraud action. He has represented himself in the malicious prosecution proceedings.

required by Arizona common law because the action had been terminated by a settlement agreement rather than on the merits.

The Arizona Court of Appeals affirmed, approving the trial court's definition of the state law requirements for malicious prosecution. Haas' petition for review in the Arizona Supreme Court was denied on September 28, 1982. No federal questions were presented by Petitioner Haas in the trial court, in his briefs filed in the Court of Appeals, or in his petition for review to the Arizona Supreme Court.

The petition for a writ of certiorari from this Court is dated December 24, 1982.

SUMMARY OF ARGUMENT

Because no federal question was presented to and decided by the courts below, no jurisdiction exists under 28 U.S.C. § 1257(3). Petitioner advanced only issues of state law in the state courts, and cannot argue for the first time in this Court that a federal right is involved.

Alternatively, petitioner's federal question is so insubstantial that the petition should be denied as a discretionary matter. No special or important reasons exist for granting the writ of certiorari. Petitioner argues that Arizona common law governing malicious prosecution denies his right to substantive due process. Arizona law holds when an action is terminated by negotiated agreement, no malicious

prosecution claim can be based on the action. Petitioner's due process argument is unsupported by any authority and is actually an argument about the wisdom of state law disguised by federal constitutional catchwords. Finally, the Arizona common law rests on a rational basis and does not violate due process.

ARGUMENT

I. JURISDICTION IS ABSENT BECAUSE NO
FEDERAL QUESTIONS WERE RAISED OR DECIDED
IN THE STATE COURTS.

Petitioner Haas invokes the
certiorari jurisdiction of this Court
under 28 U.S.C. § 1257(3), which allows
review of final judgments by the highest
state court in which a decision was
obtained. The statute provides that
jurisdiction exists only

where the validity of a treaty or
statute of the United States is
drawn in question or where the
validity of a State statute is
drawn in question on the ground of
its being repugnant to the
Constitution, treaties or laws of
the United States, or where any
title, right, privilege or
immunity is specially set up or
claimed under the Constitution,
treaties or statutes of, or
commission held or authority
exercised under, the United States.

Petitioner Haas argues for the first time in this Court that his federal right to due process of law was violated. (Petition at 16). As Petitioner concedes, he did not raise this or any other federal question in the Arizona courts and those courts did not decide any federal question. (See Petition at 14-15, stating questions raised and decided in Court of Appeals).

Since the federal question sought to be reviewed was neither presented nor decided in the state courts, certiorari jurisdiction is lacking. In Cardinale v. Louisiana, 394 U.S. 437 (1969), the Court dismissed a writ of certiorari for want of jurisdiction because petitioner had failed to assert any federal issue in the state courts. Justice White traced this rule to the early days of the Republic:

It was very early established that the Court will not decide federal constitutional issues raised here

for the first time on review of state court decisions. In Crowell v. Randell, 10 Pet. 368, (1836), Justice Story . . . came to the conclusion that the Judiciary Act of 1789 . . . vested this Court with no jurisdiction unless a federal question was raised and decided in the state court below. 394 U.S. at 438.

Even if Petitioner Haas is correct that a federal right was violated, jurisdiction is lacking unless he gave the state courts an opportunity to rectify the error. The Supreme Court

cannot review [a] final judgment, even if it denied some title, right, privilege or immunity of the unsuccessful party, unless it appear from the record that such title, right, privilege or immunity was "specially set up and claimed" in the state court as belonging to such party, under the Constitution, or some treaty, statute, commission, or authority of the United States. F.G. Oxley Stave Co. v. Butler County, 166 U.S. 648, 653 (1897) (dismissing writ of error for lack of jurisdiction).

This jurisdictional rule has been applied many times by this Court in "an unbroken line of precedent." Beck v.

Washington, 369 U.S. 541, 553 (1962) (citing cases). Since the rule that the Court reviews only those arguments presented to the State courts is not discretionary but jurisdictional, Amalgamated Food Emp. Union Local 590 v. Logan Valley Plaza, Inc., 391 U.S. 308, 334 (1968) (J. Harlan, dissenting), the petition in this case must be dismissed.

II. EVEN IF JURISDICTION EXISTED, REVIEW OF THE INSUBSTANTIAL CLAIM SHOULD BE DENIED.

Even if jurisdiction existed and review were possible, the petition should be denied as a matter of judicial discretion. The considerations which ordinarily warrant review on a writ of certiorari are missing from this case. No important question of federal law exists in this case, nor is there a conflict in the decision of a federal question between the courts below and

other courts. See Rule 17, Rules of the Supreme Court ("considerations governing review on certiorari"). Haas does not even discuss these considerations in his petition. Nor are there any objective indications that this case has particular importance. The Arizona Court of Appeals did not think the case important enough to publish its opinion. See generally, Rule 28(b), Arizona Rules of Civil Appellate Procedure.

Indeed, the federal question presented by Petitioner Haas is wholly insubstantial. He contends that he has a "right to substantive due process" which entitles him to pursue a malicious prosecution claim without being subjected to state common law requirements for proving such a claim. (Petition at 16). Petitioner cites not a single case from any jurisdiction which supports this unique view of the Federal Constitution.

The flimsiness of petitioner's argument is revealed by its quick degeneration into an attack on the opinion below as an erroneous statement of Arizona common law. (Petition at 17 et seq.). But the Supreme Court does not review matters of state law for error. The federal courts apply state law as decided by state courts and legislatures except in matters governed by the Federal Constitution or acts of Congress; there is no federal general common law which overrides state law. Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938).

Petitioner's attack on state law in this Court is totally misdirected, and his attempt to rephrase the state law issue as a federal one is obviously contrived.

Petitioner's citation of this Court's decision in Crescent City Live-Stock Landing & Slaughter-House Co. v. Butchers' Union Slaughter-House &

Live-Stock Co., 120 U.S. 141 (1887), fails to support his due process contention. Although this pre-Erie case touches upon the law governing malicious prosecution actions, it does not attempt to decide that a federal common law rule^{2/} or that a right created by federal law governs such actions. Instead, the sole question presented was whether a state court had given proper effect to a federal court decision by allowing damages for malicious prosecution against a party who had been successful in the federal trial court. The Court expressly held that this narrow question arose under the Federal

^{2/}Even if it did declare federal common law, the declaration would no longer be binding in the post-Erie federal system.

Constitution and laws, and was not a question of state law or federal common law. 120 U.S. at 146.

Petitioner's asserted due process violation thus lacks authoritative support as a federal issue, and is in fact a state law issue contorted into a federal disguise. Moreover, the due process contention is devoid of analytical weight. Petitioner claims that he has a "substantive due process" right. (Petition at 16). Does he contend that the Federal Constitution allows him to assert a state tort claim in state court without complying with state tort law? Nothing in the Constitution requires that the federal structure of our national legal system be so upset.

Petitioner has not contended that Arizona's common law of malicious prosecution lacks a rational basis. In

fact, the rationale for the state law rule challenged by petitioner was explained by the Arizona Court of Appeals in its decision below:

The rationale for disallowing termination pursuant to settlement as a "favorable termination" for purposes of a malicious prosecution action has been stated as follows:

A dismissal resulting from negotiations, settlement, or consent is generally not deemed a favorable termination of the proceedings In such a case the dismissal reflects ambiguously on the merits of the action as it results from the joint action of the parties, thus leaving open the question of defendant's guilt or innocence.

Minasian v. Sapse, 80 Cal. App. 3d 823, 827, 145 Cal. Rptr. 829, 832 n. 4 (1978).

The reason for this rule is that where the termination of the case is brought about by a compromise or settlement between the parties, understandingly entered into, it is such an admission that there was probable cause that the plaintiff cannot afterwards retract it and try

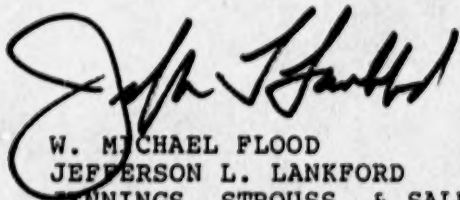
the question, which by settling he waived.

Tower Special Facilities, Inc. v. Investment Club, 104 Wis. 2d at 228, 311 N.W.2d at 229 (quoting Lechner v. Ebenreiter, 235 Wis. 244, 252, 292 N.W. 913, 916-917 (1940)).
(Petitioner's Appendix at 5a-6a).

Haas also was represented by counsel when he entered into the agreement in the fraud action which precluded a later malicious prosecution action. He has never produced evidence that counsel failed to fully inform him of the consequences of his decision. He voluntarily and knowledgeably entered into an agreement which necessarily led to the result of which he now complains. Petitioner's assertion of a denial of due process is no more than that: an assertion not grounded in either law or fact.

CONCLUSION

Because jurisdiction is lacking in this case for want of a properly presented federal question, and in the alternative because the federal question presented is insubstantial, respondents Edgar Hash and Elaine Hash respectfully request that the Court dismiss or deny the petition for a writ of certiorari to the Arizona Court of Appeals.

A large, stylized handwritten signature in black ink, appearing to read "W. Michael Flood", is written over the typed name and address.

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